

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

OCT 15 1998

In re Applications of )  
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AMERITECH CORP., )  
Transferor, )  
 )  
AND )  
 )  
SBC COMMUNICATIONS INC., )  
Transferee, )  
 )  
For Consent to Transfer Control of )  
Corporations Holding Commission Licenses and )  
Authorizations Pursuant to Sections 214 and )  
310(d) of the Communications Act and )  
Parts 5, 22, 24, 25, 63, 90, 95 and 101 )  
Of the Commission's Rules )

CC Docket No. 98-141

To: The Commission

**COMMENTS OF  
THE ALARM INDUSTRY COMMUNICATIONS COMMITTEE**

The Alarm Industry Communications Committee ("AICC"), by its attorneys, hereby submits the following Comments in response to the above-captioned Applications of SBC Communications, Inc. ("SBC") and Ameritech Corporation ("Ameritech") for transfer of control of Ameritech to SBC.<sup>1</sup>

Generally, AICC does not oppose the SBC/Ameritech Applications. However, AICC submits that if, as a result of the merger and transfer of control, SBC is permitted to take control

<sup>1</sup> Pursuant to Public Notice, DA 98-1492, released on July 30, 1998, as modified by this Commission's Order, DA 98-1765, released on September 1, 1998, Petitions/Comments on the SBC/Ameritech Applications are due by October 15, 1998. These Comments therefore are timely filed.

of Ameritech's alarm monitoring business, SBC will be engaging in the provision of alarm monitoring services in direct violation of Section 275(a)(1) of the Communications Act. Accordingly, Section 275(a) mandates that, as a condition precedent to the proposed transfer, the Commission require Ameritech to divest all of its alarm monitoring assets and cease providing alarm monitoring services. Absent divestiture, the transfer of control of Ameritech to SBC would contravene the express terms of the Communications Act and be inconsistent with the public interest.

### **BACKGROUND**

Section 275(a)(1) of the Communications Act prohibits Bell Operating Companies ("BOCs") and BOC affiliates from providing alarm monitoring services until February 8, 2001, five years after enactment of the Telecommunications Act of 1996 ("1996 Act").<sup>2</sup> Congress seems to have intended this five-year moratorium on BOC provision of alarm monitoring services to "ensure a level playing field" between the BOCs and the independent alarm monitoring service providers, which still depend on the BOCs' local exchange networks for transmission of their alarm monitoring services.<sup>3</sup> Section 275(a)(2), however, goes on to exempt from this moratorium those BOCs and BOC affiliates that were providing alarm monitoring services as of November 30, 1995.<sup>4</sup>

On November 30, 1995, of all of the BOCs, only Ameritech was authorized to provided alarm monitoring services, and hence only Ameritech qualified for the so-called "grandfather

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<sup>2</sup> 47 U.S.C. § 275(a)(1).

<sup>3</sup> H.R. Rep. No. 104-204, 104th Cong., 1st Sess., 87.

<sup>4</sup> 47 U.S.C. § 275(a)(2).

exception.”<sup>5</sup> Through a wholly owned subsidiary, SecurityLink from Ameritech, Inc.

(“SecurityLink”), and by virtue of its grandfathered status, Ameritech is now the second largest provider of alarm services in the country.<sup>6</sup> AICC would note, however, that Ameritech’s powerful market position is attributable in large part to its unlawful acquisition, under Section 275(a)(2), of the assets of Central Control Alarm Corp. (“CCA”), Norman Systems Securities, Inc. (“Norman”), Masada Security, Inc. (“Masada”), and of a division of Circuit City Stores, Inc. (“Circuit City”).<sup>7</sup>

In connection with their proposed merger, Ameritech and SBC propose to transfer to SBC control of various licenses and authorizations controlled or requested by Ameritech or its affiliates or subsidiaries.<sup>8</sup> If the Commission approves the transfer of those licenses and authorizations, and, of course, in the event that all other requisite approvals are obtained, Ameritech will become a wholly owned subsidiary of SBC.<sup>9</sup> Thus, as Ameritech’s corporate parent, SBC would exercise ultimate control over all of Ameritech’s operations, including

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<sup>5</sup> *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring services*, Second Report and Order, FCC 97-101, CC Docket No. 96-152 (rel. March 25, 1998), ¶ 33 (“*Second R&O*”).

<sup>6</sup> *Alarm Indus. Communications Comm’n v. FCC*, 131 F.3d 1066, 1067 (D.C. Cir. 1997).

<sup>7</sup> *See Enforcement of Section 275(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Against Ameritech Corporation*, Memorandum Opinion and Order on Remand and Order to Show Cause, FCC 98-226 (rel. Sept. 25, 1998), ¶ 1 (“*Second Show Cause Order*”); *Enforcement of Section 275(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Against Ameritech Corporation*, Memorandum Opinion and Order and Order to show Cause, FCC 98-148 (rel. July 8, 1998), ¶ 1 (“*First Show Cause Order*”).

<sup>8</sup> *See Application of Ameritech Corporation and SBC Communications Inc., for Authority, Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Control of Ameritech Corporation, a Company Controlling International Section 214 Authorizations* (filed July 24, 1998); *Application of Ameritech Corporation and SBC Communications Inc., for Authority, Pursuant to Part 24 of the Commission’s Rules, to Transfer Control of a License Controlled by Ameritech Corporation* (filed July 24, 1998) (together, the “*Merger Applications*”).

<sup>9</sup> *See id.*, “Description of the Transaction.”

Ameritech's provision of alarm monitoring services through SecurityLink. SBC, however, as discussed more fully below, was not grandfathered by Section 275(a)(2), and so may not, under Section 275(a)(1), provide alarm monitoring services, until February 8, 2001.

**I. SECTION 275(a) OF THE COMMUNICATIONS ACT PROHIBITS SBC FROM PROVIDING ALARM MONITORING SERVICES UNTIL FEBRUARY 8, 2001.**

As discussed above, Section 275(a) of the Communications Act flatly prohibits BOCs, directly or through an affiliate, from engaging in the provision of alarm monitoring services until February 8, 2001, unless, as provided in Section 275(a)(2), the BOC provided such services on November 30, 1995. The Commission has stated expressly that this "grandfather exception" of Section 275(a)(2) applies *only* to Ameritech's SecurityLink service: "Since Ameritech is the only BOC that was authorized to provide alarm monitoring service as of November 30, 1995. . . *Ameritech is the only BOC that qualifies for 'grandfathered' treatment under section 275(a)(2).*"<sup>10</sup> Thus, quite simply, SBC may not at this time engage in the provision of alarm monitoring services.

As a result of the proposed SBC/Ameritech merger, however, and unless the Commission requires Ameritech to divest its alarm monitoring assets, as discussed below, SBC, as Ameritech's corporate parent, will take control of all of Ameritech's operations -- including SecurityLink -- and hence will in fact become an unauthorized provider of alarm monitoring services. AICC would note that, given the explicitness of Section 275(a)(1)'s prohibition and the Commission's interpretation thereof, any attempt to argue that the Section 275(a)(2) exception for Ameritech and its affiliates somehow could apply to SBC after the merger would be

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<sup>10</sup> *Second R&O*, ¶ 33 (emphasis added). *See also Alarm Indus. Communications Comm'n*, 131 F.3d at 1067.

unavailing. As the FCC has emphasized, “[S]ection 275(a)(2) pertains exclusively to alarm monitoring activities by a grandfathered BOC [*i.e.*, Ameritech,] and, therefore, has no applicability to non-grandfathered BOCs”<sup>11</sup> -- in this context, SBC.

The exception for Ameritech established by Section 275(a)(2) cannot, therefore, be transferred to SBC: in sum, once control of Ameritech passes to SBC, Ameritech effectively loses its grandfathered status. It is beyond dispute that SBC could not purchase Ameritech’s SecurityLink subsidiary from Ameritech at this time without violating Section 275(a)(1). Allowing SBC to evade the restrictions on BOC provision of alarm services imposed by Section 275 simply by acquiring control of Ameritech itself, rather than just its SecurityLink subsidiary, would be completely contrary to both the letter and the spirit of that section, and, indeed, would render Section 275(a)(1) entirely superfluous. As the Commission acknowledged in the *Second R&O*, principles of statutory construction require “‘that one provision should not be interpreted in a way. . . that renders other provisions of the same statute inconsistent or meaningless.’”<sup>12</sup>

Consistent with that principle, and in order to “preserve the strength of the five-year restriction on BOC entry into the alarm monitoring services market and the associated protections to nonaffiliated alarm monitoring providers,”<sup>13</sup> the Commission emphatically has rejected BOC efforts to narrow the broad mandate of Section 275(a)(1) and expand the narrow exception of Section 275(a)(2), in order to be able to provide alarm monitoring services. For example, in the *Second R&O* the Commission rejected BellSouth’s argument that Section 275(a)(2) allows non-grandfathered BOCs, like grandfathered BOCs, to engage in the provision

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<sup>11</sup> *Second R&O*, ¶ 41.

<sup>12</sup> *Id.*, ¶ 11, citing *Shields v. United States*, 698 F.2d 987, 989 (9th Cir.), *cert. denied*, 464 U.S. 816 (1982).

<sup>13</sup> *Second R&O*, ¶ 39.

of alarm monitoring to the extent that they do not obtain an “equity interest in” or “financial control of” another alarm monitoring services provider.<sup>14</sup> The Commission emphasized that Section 275(a)(2) applies only to grandfathered BOCs. Moreover, and significantly, the Commission has rejected even Ameritech’s attempts to expand its grandfathered status, ordering Ameritech to show cause why it should not be directed to divest itself of the assets it unlawfully acquired from CCA, Norman, Masada, and Circuit City.<sup>15</sup>

Similarly, the FCC has interpreted broadly the types of activities that may constitute engaging in alarm monitoring services as contemplated by Section 275(a)(1). For example, the Commission has determined that there could be some situations where a BOC is not *directly* providing alarm monitoring service, but its interests could be so intertwined with the interests of an alarm monitoring service provider -- such as in the context of sales agency and marketing arrangements -- that the BOC itself could be considered to be engaged in the provision of alarm monitoring in contravention of Section 275(a).<sup>16</sup> In all of these cases the Commission has rejected BOC efforts (or potential efforts) to evade the reach of Section 275.

Thus, in sum, SBC was not authorized to provide alarm monitoring services on November 30, 1995, and so, pursuant to Section 275(a), may not now begin providing such services until February 8, 2001. This Commission must not permit SBC to evade that clear and express prohibition through the means of its merger with the grandfathered Ameritech.

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<sup>14</sup> *Id.*, ¶ 41.

<sup>15</sup> *See Second Show Cause Order*, ¶ 1; *First Show Cause Order*, ¶ 1.

<sup>16</sup> *Second R&O*, ¶ 38.

## **II. THE COMMISSION MUST REQUIRE AMERITECH TO DIVEST ITS ALARM MONITORING ASSETS AS A CONDITION PRECEDENT TO THE MERGER.**

Because the acquisition of Ameritech's alarm monitoring assets by SBC would violate Section 275(a)(1), as discussed above, the Commission should require Ameritech to divest those assets before approving the SBC/Ameritech merger and transfer of control. Quite simply, if SBC and Ameritech wish to consummate the merger, control of Ameritech's alarm monitoring assets must be transferred to an unaffiliated, non-BOC entity in order to comport with the express and mandatory terms of Section 275(a). Accordingly, in this context, divestiture is the only effective means of preventing SBC from being in a position to provide unauthorized alarm monitoring services as a result of the proposed transaction. AICC would note that, as mentioned above, the Commission has in other proceedings ordered Ameritech to show cause why it should not be required to divest alarm monitoring assets acquired in violation of Section 275(a)(2).<sup>17</sup>

A divestiture order in this context is entirely consistent with Commission practice: the Commission routinely has found that divestiture of an unlawful acquisition or ownership interests is a preferred and appropriate remedy for violations and potential violations of its rules and policies. For example, the FCC has ordered divestiture of assets or interests to cure violations of its cross-ownership rules,<sup>18</sup> as well as of its broadcast ownership rules and rules regarding unauthorized transfers of broadcast ownership interests.<sup>19</sup> Indeed, AICC would note

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<sup>17</sup> See *Second Show Cause Order*, ¶ 29; *First Show Cause Order*, ¶ 24.

<sup>18</sup> See, e.g., *Lake Telephone Company*, 41 FCC 2d 335 (1973); *Fort Mill Telephone Company*, 25 FCC 2d 748 (1970).

<sup>19</sup> See, e.g., *The Petroleum V. Nasby Corporation*, 10 FCC Rcd 6029 (1995); *Spanish International Communications Corporation*, 2 FCC Rcd 3336 (1987). The Commission also has ordered divestiture of facilities constructed in violation of Section 214 of the Communications Act. See, e.g., *Comark Cable Fund III d/b/a CCI Cablevision v. Northwestern Indiana Telephone Company, et. al*, 100 FCC 2d 1244 (1985); *Eagle Telecommunications, Inc.*, 54 Rad. Reg. 2d (P&F) 1124 (1983).

that SBC and Ameritech already have taken steps to avoid one potential divestiture order, in connection with their ownership of overlapping cellular licenses in the Chicago and St. Louis areas. In their Merger Applications, SBC and Ameritech have stated that they will comply with both Sections 20.6 and 22.942 of the Commission's rules, which will require divestment of all ownership interests in one of the overlapping cellular licenses.<sup>20</sup>

Most recently, and in a parallel context, the Commission found divestiture of assets an appropriate and necessary precondition to approval of the merger of MCI Communications Corporation ("MCI") and WorldCom, Inc. ("WorldCom"). Specifically, in that proceeding, the Commission determined that the divestiture of MCI's entire Internet business was required to obviate any danger that the merger would give MCI-WorldCom undesirable international market power in the provision of Internet services; divestiture resolved the FCC's competitive concerns about the MCI/WorldCom merger. AICC submits that divestiture is an even more necessary precondition here to merger, where violation of a provision of the Communications Act -- in addition to competitive policy and public interest issues -- is at stake.

### **CONCLUSION**

Section 275 is crystal clear: among the BOCs, *only* Ameritech and its affiliates may engage in the provision of alarm monitoring services. SBC, as a BOC which is not Ameritech, cannot. SBC is thus indisputably barred from acquiring from Ameritech its SecurityLink alarm monitoring subsidiary. It also is plainly evident that if SBC obtains control of Ameritech, itself, as described in the Merger Applications, SBC obviously will obtain indirect control of

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<sup>20</sup> See Merger Applications at 59-60.




Ameritech's alarm monitoring subsidiary, and hence be in a position to engage in the provision of those services in violation of Section 275(a).

Accordingly, AICC respectfully submits in the event that the Commission approves the proposed SBC/Ameritech merger, the agency also must order Ameritech to divest its alarm monitoring assets before the merger is completed. Divestiture is the only means of preventing SBC from gaining control of those assets in violation of both the letter and the spirit of Section 275.

Respectfully submitted,

**THE ALARM INDUSTRY COMMUNICATIONS  
COMMITTEE**

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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments of the Alarm Industry Communications Committee were served by hand this 15th day of October, 1998 on the following:

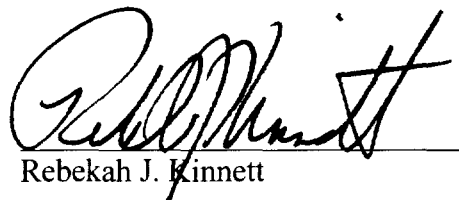
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